



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 21, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0159

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleged that the Named Employee may have made unprofessional comments during a conversation with another officer.

SUMMARY OF INVESTIGATION:

OPA received a referral from a lieutenant concerning potentially unprofessional comments made by Named Employee #1 (NE#1). The comments occurred during a conversation between NE#1 and another officer – referred to here as Witness #1 (WO#1).

At the time, NE#1 and other officers were responding to an incident involving the Subject. The Subject was armed with a machete. He had pounded on his neighbor's door, causing damage, and had threatened to kill the neighbor. Given this, officers developed probable cause to arrest the Subject; however, he was inside of his apartment and was, thus, considered a barricaded suspect. NE#1 tried to communicate with the Subject and related the reason why the officers were there. This was unsuccessful in gaining the Subject's cooperation and/or voluntary surrender. NE#1 coordinated containment and then he and WO#1 created a perimeter around the residence. SWAT was notified and came to the scene. SWAT also began attempted communications with the Subject and started planning for their potential upcoming force progression.

While this was occurring, NE#1 and WO#1 were engaged in containment outside of the residence. Their BWV captured their conversation with each other. NE#1 made sarcastic comments about the Subject's non-compliance and continued "resistance." NE#1 also referenced force that could be used on the Subject, again appearing to do so sarcastically from a review of the BWV. The comments were made conversationally between NE#1 and WO#1 and not at a high volume. They were not made in the presence of any other officers, including SWAT personnel. NE#1 did not discuss any potential uses of force with SWAT and did not engage in any discussions surrounding what force SWAT officers were planning on potentially using or concerning their tactical planning. In addition, the BWV showed that no community members overhead what was said.



Eventually, SWAT took the Subject into custody without force needing to be used. NE#1 assisted in handcuffing the Subject and communicated with him at that time. NE#1 spoke with him patiently and did not make any unprofessional statements at that time. NE#1 also addressed a complaint of handcuffing discomfort made by the Subject.

When NE#1's chain of command became aware of the comments, they counseled NE#1 concerning professionalism and documented that training in the Performance Appraisal System.

As part of its investigation, OPA reviewed the BWV that captured the comments, as well as other documentary evidence. OPA also interviewed NE#1.

At his OPA interview, NE#1 took full ownership of his comments and acknowledged that they were inappropriate. NE#1 did not make any excuses and said that he would not repeat this behavior in the future.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 – Standards and Duties 10. Employees Shall Strive to be Professional

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.”

OPA agrees with the Complainant and NE#1 that the statements at issue here were inappropriate. OPA believes – and NE#1 recognized – that, regardless of whether people could overhear what was said, he should have not made these comments.

Had the comments been made in the presence of the Subject or had they been overheard or directed towards a community member, OPA would have issued a Sustained finding against NE#1. However, OPA has historically treated situations where the comments were made solely between officers and outside of the presence of others differently. While fact specific, OPA has trended towards issuing Training Referrals in such cases. In OPA's experience, this is particularly appropriate where the involved officers accepted responsibility and took complete accountability for their actions. This is what happened here as NE#1 admitted that he acted improperly and did not make any excuses.

OPA further notes that NE#1 did not threaten force against the Subject and did not try to influence the use of force against him. He did not speak with SWAT about their planning or tactics and was not involved in their consideration of the force that might need to be used. Moreover, after the Subject was taken into custody, NE#1 treated him professionally and, in fact, helped the Subject with a complaint of pain from his handcuffs.

Given the above and because NE#1 has never been disciplined for or even investigated for similar conduct in the past, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should review OPA's findings with him. While the chain of command previously spoke to NE#1 concerning this incident, that conversation did not appear to be



particularly robust or to clearly identify the problematic statements he made. There is also no indication that they provided him with any further retraining regarding professionalism and, if so, why not. As such, the chain of command should comprehensively counsel and retrain NE#1 and, when complete, document the steps they took in an appropriate database. Lastly, the chain of command should advise NE#1 that any similar conduct in the future will result in a Sustained finding and the imposition of discipline.

Recommended Finding: **Not Sustained (Training Referral)**